



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3003466
Applicant Name: Todd Walton for Clearwire
Address of Proposal: 6402 California Avenue Southwest

SUMMARY OF PROPOSED ACTION

Master Use Permit to establishment use for construction of a minor communication utility (Clearwire) consisting of a total of three panel antennas (three sector array) enclosed within a “faux chimney” on the penthouse and two microwave dishes place mounted on the side of a penthouse, on the roof of an existing residential building. Project includes installation of equipment cabinet on the rooftop behind a screening wall.

The following approvals are required:

Administrative Conditional Use Review - To allow a minor communication utility to exceed the height of a Neighborhood Commercial Three zone. Section 23.57.012.B, Seattle Municipal Code

SEPA - Environmental Determination - *Chapter 25.05*, Seattle Municipal Code

SEPA DETERMINATION: ☐ EXEMPT ☒ DNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition
involving another agency with jurisdiction

* Early Notice DNS published February 2, 2006

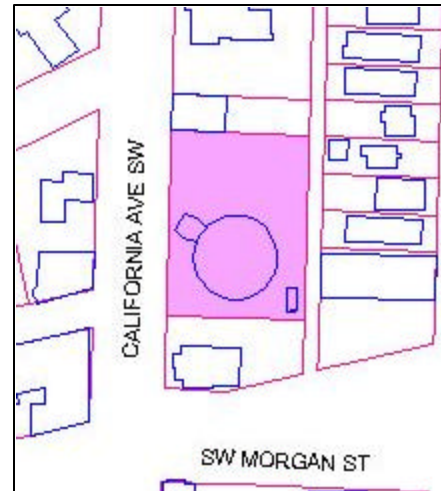
BACKGROUND DATA

Site Location and Description

The subject property is located on the eastside California Avenue Southwest in the 6400 block, between Southwest Graham Street to the north and Fauntleroy Way Southwest in West Seattle. The site is also located within Morgan Junction Residential Urban Village overlay district. The subject site is nearly rectangular in shape and encompasses a land area of approximately 30,000

square feet (200 feet X 150 feet), within a Residential Commercial Three zone, with a height limit of 30 feet (NC3-30). The site is currently developed with a residential (apartment) use, owned and operated by Seattle Housing Authority. The eight (8)-story building was constructed in 1968, and is nonconforming to current land use NC3-30 height development standards, if not allowed by code. And as such, any new development activity shall not increase the extent of the existing nonconformity.

The site is fully developed with an existing building occupying a significant portion of the development site, landscaping and surface parking. An existing minor communications utility (Cingular) is already located on the roof top. The circular shaped building is unique in its design for the greater Seattle area, with primary access along the west façade. Vehicle access is obtained off California Avenue through a modified U-shaped driveway. The surface parking lot is located between the building's north façade and north property line, with vehicle access to California Avenue and an alley. An improved 16 feet wide paved alley abuts the subject lot's east property line. The subject lot slopes down modestly from northeast to southwest, approximately 8 feet over a distance of 260 feet. The California Avenue Southwest right-of-way is fully improved with concrete sidewalks, curbs, and gutters.



The subject site is located within a NC3-30 zoning band, around this stretch of California Avenue Southwest. There is a wide assortment of commercial uses, including restaurants, retail, customer service offices, etc., in this area which has sustained a robust pedestrian and vehicle experience throughout the day and evening. Outside this zoning area to the east is a less dense Multifamily Lowrise Three zone (L-3), with a minimum lot area of one unit per 800 square feet. This area contains a mix of modest single and multi-family structures. To the west of the California Avenue zoning band the zone transitions to a less dense Single Family 5000 zone. This Single Family area is expansive that truly reflects urban residential living. Development in the area includes churches, and modest one and two-story single family residences.

Proposal Description

A Master Use Permit Application proposes to establish use for installation of a minor communication utility (Clearwire) on the roof of an existing apartment building. The project includes three rooftop antennas (3-Sector) to be located near the center of the building encased within a faux shroud compatible with the existing building, and two rooftop microwave dishes mounted on the penthouse wall facing south. The equipment cabinet will be located on the rooftop within faux penthouse structure.

The highest portion of the proposed minor utility and screening is proposed to be 92.25 feet above existing grade. The height limit for the NC3-30 zone is 30 feet above grade, and may extend to higher under strict application of Code exceptions. Approval through an Administrative Conditional Use Permit is required for locating a minor communication utility in a Neighborhood Commercial zone and for constructing minor communication utilities that exceed the height limit of the zone.

Public Comment

Date of Notice of Application: February 2, 2006
Date End of Comment Period: February 15, 2006

Letters 0

Issues: No public comment letters were received by DPD, during comment period.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

The establishment or expansion of a minor communication utility is regulated pursuant to Section 23.57.002. Section 23.57.012.B of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Neighborhood Commercial zone when the communication utility and accessory communication devices exceed the height limit of the underlying zone as modified by subsection 23.57.012.C with the approval of an administrative conditional use permit. Approval shall be regulated pursuant to the requirements of this section enumerated below:

1. *The proposal shall not result in a significant change in the pedestrian or retail character of the commercial area.*

The applicant's plans depict a thoughtful integration of the telecommunication facility into the architectural design on the rooftop of the existing building. By proposing a screening technique that employs a faux chimney surface that is compatible to the existing architectural treatment throughout the building's exterior, the applicant has succeeded in designing a cohesive relationship to the existing architectural integrity of the existing building. Architecturally, this screening technique effectively harmonizes with the building's existing façade treatment. The three antenna arrays are proposed to be located near the roof top's center on top of the penthouse, with two microwave dishes attached to the south wall of the elevator penthouse approximately eighty-five feet above grade.

The accessory equipment cabinets will also be placed on the rooftop enclosed within a shroud assembly mounted to the north wall of the existing elevator penthouse. The height of the shroud assembly will be approximately half the height of the penthouse. As viewed from abutting properties the screening casings (faux penthouse) housing the panel antennas, accessory equipment, on face appearance will look and appear to function like penthouses. The views from neighboring commercial and residential structures would not be altered by the presence of the facility. The applicant has provided photographically simulated evidence suggesting that the visual intrusion would be minor.

The proposed minor communication utility is not likely to result in significant change in the pedestrian or retail character of the commercial area. Neighbors and tenants of the host building will not likely be impacted by the utility, in terms of its land use, streetscape, and visual intrusion once it is constructed, and cell phone coverage in the area will be improved which will likely be beneficial to many residents and visitors to the neighborhood.

The host residential development site occupies 200 linear feet of street frontage, with a building that is the tallest structure in the area; and as such does not have a commercial presence. As proposed, the minor communications utility will not constitute a significant change in the

pedestrian or retail character at street level. Given the roof top location of the minor communications utility it is expected that activity at street level will be marginally impacted. It is anticipated that one vehicle will visit the site on a monthly basis to monitor and service the equipment. The surrounding commercial uses would be unaffected by the monthly visits and presence of the minor communications utility, located more than 80 feet above street level. Commercial activity in this area is solely focused at street level and the pedestrian or retail character is anticipated to be undisturbed by the presence of the minor communications utility.

2. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The applicant's RF engineer has provided evidence (Letter from David J. Pinion, (RF) Engineer, and dated December 20, 2005) that the proposed antenna height, 24.25 feet above the top of roof, is the minimum height necessary to ensure the effective functioning of the utility in the most inconspicuous manner possible. Therefore, the proposal complies with this criterion.

The proposed antennas will be located on the rooftop of the existing building. The proposed minor communication facility extending approximately 24.25 feet above the roof top would be taller than the base height limit for Neighborhood Commercial Three zones. However, the additional height may be granted through an administrative conditional use permit.

Due to the operational characteristics of the proposed facility, a clear line of site from the antennas in the system throughout the intended coverage area is necessary to ensure the quality of the transmission of the broadband system. The strict application of the height limit would preclude the applicant from providing wireless services for the intended coverage area, which extends north towards Southwest Brandon Street, west to Beach Drive Southwest, south to Southwest Webster Street, and east towards 35th Avenue Southwest. The site was chosen because of its elevation, height of the existing building, and location which is uniquely suited to serve the adjoining commercial and residential areas. No commercial properties were identified with sufficient elevation height to provide the coverage needed to meet the service objectives in the NC3-30 zone. Locations around the intersections of California Avenue Southwest, Fauntleroy Way Southwest, and Southwest Morgan Street Avenue, were also considered. However, these sites were deemed inadequate to meet the parameters to meet optimum levels of service. The additional height above the underlying zone height development standard is the minimum required to obtain sufficient coverage. The additional increase in bulk, view blockage and shadow impacts are not anticipated from the extra 24.25 feet extension of the proposed antennas.

According to the applicant, the literal interpretation and strict application of the Land Use Code would be that Clearwire could not meet its federal mandate of its FCC license to provide high speed wireless internet access throughout the Seattle metropolitan area. This proposal site at this elevation is a vital link in the planned network for the Seattle Metropolitan area. Given these alternatives, the height limit extension is a minimal impact. Thus, this criterion is satisfied.

5. *If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a*

manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.

The proposed minor communication utility is not proposed for a new freestanding transmission tower. Therefore, this provision does not apply.

SUMMARY

The proposed project is consistent with the administrative conditional use criteria of the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore will not require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

This application to install a minor communication utility in a Neighborhood Commercial zone, which is above the height limit of the underlying zone, is **CONDITIONALLY APPROVED**.

SEPA ANALYSIS

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by Peter James dated December 20, 2005. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered.

Short-Term Impacts

The following temporary construction-related impacts are expected: 1) decreased air quality due to increased dust and other suspended particulates from building activities; 2) increased noise and vibration from construction operations and equipment; 3) increased traffic and parking demand from construction personnel; 4) blockage of streets by construction vehicles/activities; 5) conflict with normal pedestrian movement adjacent to the site; and 6) consumption of renewable and non-renewable resources. Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically, these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way, and sidewalk repair); and 2) Building Code (construction measures in general). Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. The proposal is located within residential receptors that would be adversely impacted by construction noise. Therefore, additional discussion of noise impacts is warranted.

Construction Noise

The limitations of the Noise Ordinance (construction noise) are considered inadequate to mitigate the potential noise impacts associated with construction activities. The SEPA Policies at SMC 25.05.675 B allow the Director to limit the hours of construction to mitigate adverse noise impacts. Pursuant to this policy and because of the proximity of neighboring residential uses, the applicant will be required to limit excavation, foundation, and external construction work for this project to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. It is also recognized that there are quiet non-construction activities that can be done at any time such as, but not limited to, site security, surveillance, monitoring for weather protection, checking tarps, surveying, and walking on and around the site and structure. These types of activities are not considered construction and will not be limited by the conditions imposed on this Master Use Permit.

The other short-term impacts not noted here as mitigated by codes, ordinances or conditions (e.g., increased traffic during construction, additional parking demand generated by construction personnel and equipment, increased use of energy and natural resources) are not sufficiently adverse to warrant further mitigation or discussion.

Long-term Impacts

Long-term or use-related impacts are also anticipated, as a result of approval of this proposal including: increased traffic in the area and increased demand for parking due to maintenance of the facility; and increased demand for public services and utilities. These impacts are minor in scope and do not warrant additional conditioning pursuant to SEPA policies.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a “Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility” and an accompanying “Affidavit of Qualification and Certification” for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The City of Seattle, in conjunction with Seattle King County Department of Public Health, has determined that Personal Communication Systems (PCS) operate at frequencies far below the Maximum Permissible Exposure standards established by the Federal Communications Commission (FCC) and therefore, does not warrant any conditioning to mitigate for adverse impacts.

Summary

In conclusion, several effects on the environment would result from the proposed development. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

ADMINISTRATIVE CONDITIONAL USE CONDITIONS

The owner(s) and/or responsible party(s) shall:

1. Revise plans to document exterior color palette for proposed shroud screening of the antennas, cables, and related equipment to blend with the color of the building. This shall be to the satisfaction of the Land Use Planner.
2. Revise plans to detail chimney shroud extends flush to penthouse roof top surface. This shall be to the satisfaction of the Land Use Planner.

Land Use Code Requirement (Non - Appealable) Prior to Issuance of Master Use Permit

3. The owner(s) and/or responsible party(s) shall provide access and signage in accord with Section 23.57.012C2 which restrict access to minor communications utilities to authorized personnel. This shall be to the satisfaction of the Land Use Planner.

SEPA CONDITIONS

During Construction:

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

4. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. This condition may be modified by DPD to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: _____ (signature on file) Date: April 27, 2006
Bradley Wilburn, Land Use Planner
Department of Planning and Development

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